

Before the
Federal Communications Commission
Washington, DC 20554

2001 AUG -3 P 1: 28

2002 AUG -3 P 1: 25

In the Matter of)

Request for Review of the)

Decision of the)

Universal Service Administrator by)

Bloomfield Community Schools)

Bloomfield, Nebraska)

Federal-State Joint Board on)

Universal Service)

Changes to the Board of Directors of the)

National Exchange Carrier Association, Inc.)

File No. SLD-180840

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER**Adopted: July 31, 2001****Released: August 1, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Bloomfield Community Schools (Bloomfield), Bloomfield, Nebraska.¹ Bloomfield seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Bloomfield's Funding Year 3 requests for support under the schools and libraries universal service mechanism.² For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Gary Marks, Bloomfield Community Schools, to Federal Communications Commission, filed February 26, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁷ In addition, SLD's web site contains a list of eligible services and information on how to file an application.⁸ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than thirty percent of the total.⁹ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services. If the filing

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998) (Form 471 Instructions), at 15.

⁸ See SLD web site, <<http://www.sl.universalservice.org>>; see Form 471 Instructions.

⁹ See *Request for Review of the Decision of the Universal Service Administrative Company by Uby Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

window has not closed and an applicant wishes to change the equipment that it is requesting, then the applicant must submit a new FCC Form 471 and cancel the previous request.¹⁰

4. The instant Request for Review arises from SLD's denial of Funding Request Number (FRN) 368140 of Bloomfield's Funding Year 3 application. FRN 368140 originally sought a pre-discount amount of \$483.00 per month, a total of \$5,796.00, for telecommunications services with a discount rate of 70 percent.¹¹ On April 14, 2000, SLD issued a Funding Commitment Decision Letter, denying funding for FRN 368140.¹² Characterizing the request as one seeking internal connections, SLD stated that the funding cap "will not provide for [i]nternal [c]onnections less than 81% discount to be funded."¹³

5. On April 21, 2000, Bloomfield appealed to SLD, asserting that FRN 368140 sought support for telecommunications, not internal connections.¹⁴ On February 1, 2001, SLD denied the appeal, stating that the request had been converted from one for telecommunications services to one for internal connections because it included "charges for a key system unit, which according to program rules is an eligible component of the internal connections service bucket."¹⁵ SLD conceded that, on review, it found that the unit might in fact be a telecommunications service under the applicable three-part test for determining when a requested service constitutes a telecommunications service.¹⁶ However, SLD explained: "During the appeal review process, you were not contacted to determine if the key system qualifies as telecommunications service because your request would be denied regardless of the service category, since more than 30% of your request is for ineligible products and services."¹⁷ SLD

¹⁰ *Id.*

¹¹ FCC Form 471, Bloomfield Community Schools, filed January 15, 2000 (Bloomfield FCC Form 471).

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Janet Gill, Bloomfield High School, dated April 14, 2000 (Funding Commitment Decision Letter).

¹³ *Id.* at 6. In *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997), the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect. *Id.* at 14938, para. 36. These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One Services). Any funding remaining is allocated to the requests for support for internal connections (Priority Two Services) beginning with the most economically disadvantaged schools and libraries, as determined by their discount rate. In Funding Year 3, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 81 percent discount level.

¹⁴ Letter from Margaret Hesse, Bloomfield Community Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed April 21, 2000 (Appeal to SLD), at 1.

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Janet Gill, Bloomfield High School, dated February 1, 2001 (Administrator's Decision on Appeal), at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

further explained: “The ineligible items are charges associated with the following ineligible products: 3-Line Phones, 8-Line Speaker Phones, Paging Speaker, and a Paging Power Supply.”¹⁸ SLD calculated that these items constituted 36% of the request, and concluded: “Program procedures provide that if 30% or more of an applicant’s funding request includes ineligible services, the funding request must be denied.”¹⁹ Bloomfield then filed the pending Request for Review.

6. In its Request for Review, Bloomfield argues that FRN 368140 should be construed as a request for telecommunications services, not internal connections, because the product it seeks support for does satisfy the three-part test referred to in the Administrator’s Decision on Appeal.²⁰ However, Bloomfield does not address the issue of whether 30% or more of the request consists of ineligible services.

7. After reviewing the record, we conclude that, although SLD erred in its specific calculation of the amount of ineligible services, it was nevertheless correct in concluding that 30% or more of the request consists of ineligible services. Specifically, we find that the services included in FRN 368140 that SLD found ineligible, 3-Line Phones, 8-Line Phones, a Paging Speaker and a Paging Power Supply, amounted to \$143.50 per month, not \$174 per month as SLD calculated.²¹ However, we also note that FRN 368140 includes a \$4.00 charge for an Unpublished Number, which is also an ineligible service.²² The total ineligible service cost is thus at least \$147.50, or 30.5 percent of the \$483.00 per month request. We therefore deny the Request for Review.

¹⁸ *Id.*

¹⁹ *Id.*

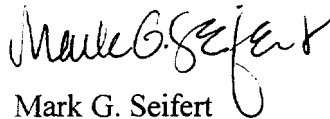
²⁰ Request for Review at 1.

²¹ See Bloomfield FCC Form 471, Attachment 1; SLD Web Site, Eligible Services List, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_12_29_00.pdf>. The breakdown of costs is as follows: 3-Line Phones, \$91; 8-Line Phones, \$9; 3-Line Phones, 39\$; Paging Speaker, \$2; Paging Power Supply, \$2.50. See Bloomfield FCC Form 471, Attachment 1. Under Commission orders and program rules, end-user equipment such as speakers, telephones and personal computers are not eligible as internal connections because they are not “needed to transport information to individual classrooms.” *Universal Service Order*, 12 FCC Rcd at 2022, para. 460; see also *Request for Review by Winterset Community School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-201905, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 22881, para. 3 (Com. Car. Bur. 2000).

²² See Bloomfield FCC Form 471, Attachment 1; SLD Web Site, Eligible Services List, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_12_29_00.pdf>.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the Request for Review filed by Bloomfield Community Schools, Bloomfield, Nebraska on February 26, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
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Common Carrier Bureau